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Course of Events in a Crime—the Witnesses and the Police: The Reconstruction and Description of Criminal Offenses in Police-Witness Interrogation

Although not currently receiving much attention in the United States, police and citizens frequently interact when reconstructing a crime. Two experiments are described here: one looks at the interrogation process and the other attempts to evaluate the relative value of eyewitness testimony vs. physical evidence.

By H. Walter Schmitz

Goals of the Study

Police officers are daily asked to reconstruct the events of a crime by interrogating victims and witnesses. In many cases, where other evidence is unavailable or insufficient, the investigation must rely almost exclusively on the accounts of involved or uninvolved observers of the offense.

The process of reconstruction is a joint effort: together with the witness, the interrogating officer recreates a past event of which the officer possesses no immediate experience. Gradually, the observers' testimony is expanded, clarified, modified, and eventually recorded in writing. During the interrogation, officer and witness engage in a process of interaction which culminates in the written protocol. This process of interaction aimed at the truthful reconstruction of an offense is referred to here as "negotiation."

The complex task of reconstructing a crime on the basis of witness testimony was investigated in terms of the following questions: How can police officers obtain a truthful description of the events? What are the criteria for determining the reliability of a particular witness? How do police officers take the reliability of a witness into account when establishing the protocol? What is the role of negotiation (as defined above) in the overall reconstruction?

Methods of the Study

For practical and legal considerations we did not base our study on actual offenses or testimonies. Instead we produced—in close collaboration with the police—several films which presented a simulated crime from a witness's point of view. Nonpolice volunteers were shown these films and took the position of either witness or victim in the interrogations. Police officers at various levels of experience conducted the interrogations, which were all recorded on tape.

For study sites, we chose a large metropolitan police station and a second one in a medium-size town. The staged crimes presented to our test persons were robbery, larceny (theft of a briefcase), and fraud (the selling of a defective, valueless watch). Test persons coming from different social backgrounds testified in 28 interrogations (15 as victims, 13 as witnesses). To gain additional insight, we conducted postinterrogation interviews in which policemen and witnesses reported their

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impressions of their respective interrogation partners. All witnesses and officers also took part in several personality and verbal fluency tests.

For an analysis of the interrogation, strategies of negotiation used by police officers and witnesses were determined and arranged according to their importance in a particular interview. In this manner, each interrogation was characterized by the prevalence or absence of particular negotiating techniques. To test the validity of the crime reconstructions, we drew up detailed synopses of the films to serve as standards of comparison to the descriptions the witnesses had given during the preliminary questioning and in the written protocol. We supplemented and verified our results by interpreting individual interrogations; in this part of the experiment, postinterrogative comments were also taken into account.

An additional experiment served to determine the value of witness testimony compared to objective evidence. Each of the two police stations was given a questionnaire in which the police officers evaluated and noted all cases of larceny, robbery, fraud, and assault that occurred within the period of 1 month. The information to be supplied included the type and amount of objective and/or witness evidence and its usefulness for (a) advancing the investigation, (b) providing conclusive evidence in the police investigation, and (c) serving as acceptable court evidence.

Results

Significance of witness testimony in a police investigation. The four offenses studied in the additional experiment (larceny, assult, robbery, fraud) clearly revealed the significance of witness testimony in the investigative process. In spite of the growing importance and quality of objective proof in modern criminology, witness testimony is still the most common form of evidence. While objective evidence was usually restricted to certain types of offenses (e.g., fraud), an average of more than two witness testimonies per case was available in all areas studied. Also, in the majority of the 2,000 cases surveyed, the officers considered the testimonies as more valuable than other evidence for the progress of the investigation and for use as police and court evidence.

Nature of the interrogation. The goal of any interrogation is "the search for an objective truth."[1] This implies that the interrogating officer must strive to obtain the greatest and most reliable amount of information possible from a witness. Beyond this general objective, however, there are few legal provisions regulating the course of the interrogation itself. To be sure, the witness must be instructed in his rights and obligations, and threats and bribes are forbidden. However, the technique and structure of the interview are left to the discretion of the police officer.

It was emphasized earlier that the interrogation is a joint effort. The setting of the interrogation, however, does not encourage close collaboration between officer and witness. During the interrogation, the officer acts as a highly specialized expert who is well aware of how he should behave and what information is relevant to the case. The witness, as a layman, is less sure of what is expected of him. Study of the simulated interrogations revealed that the police officers very rarely explained to the witnesses what information is relevant for the investigation or how the interrogation would proceed. As a result, the entire procedure remained intimidating and incomprehensible to the witnesses. Policemen, on the other hand, frequently complained about the "wordiness" and "irrelevance" of testimonies. This lack of communication not only has a negative impact on the quality and quantity of information obtained but also interferes with the witness's willingness to cooperate.

In addition, the attitudes of victims and witnesses toward the interrogation differ significantly from the outset. On the one hand, the victim, who has suffered a personal loss and who usually reports the offense to the authorities, is just as interested as the police in identifying the offender[2]; from the beginning, he is willing to aid the investigative efforts and cooperate with the police. On the other hand, a witness, who usually has no personal interest in the case, tries to fulfill his obligation with the least possible amount of time and effort when summoned. In soliciting the collaboration of an interviewee, the police officer must take into account his basic difference in attitude.

Finally, his role as official representative of a public institution places the interrogating officer in a position of superiority which is further strengthened by his easy command of the modes and regulations of the interrogation process. As a result, the officer completely dominates the interaction, deciding who will speak when, what subjects will be discussed, what is relevant or irrelevant, what conclusions will be drawn, and how they will be phrased. Police officers claim they consciously use their superiority to expose and disconcert lying witnesses. Our test persons (from the simulated interrogations), however, reported in the postinterrogative interviews that the officers' dominant position had decidedly negative influence on their testimony. At times they felt pressured into giving doubtful or even false information in order to live up to the expectations of the interrogating officer. Consequently, the validity of a testimony depends partly on the officer's ability to refrain from influencing and intimidating witnesses.

The preliminary questioning. The preliminary questioning is of considerable importance for determining the strategy of the investigation, evaluating witness credibility, designating suspects, and avoiding misunderstandings. In the simulated interrogations, a preliminary questioning of victim or witness took place in 19 of 21 cases. The officer usually introduced this phase

[1] Johann Fischer: Die polizeiliche Vernehmung. Wiesbaden, 1975, p. 105.

[2] Exceptions to this rule are cases in which an accessory to the crime pretends to be a victim.

of the interrogations by asking witnesses to "briefly tell the course of events" as they remembered it.

During the preliminary questioning two patterns of communication were employed most frequently: the narrative pattern and the question-and-answer (or interrogative) pattern. How narrative and interrogative phases followed each other and the length of each phase depended on the individual technique of the officer. Our study indicated that few officers were aware of the informative value of narrative patterns: in the unimpeded flow of narrative the victim furnishes a coherent and orderly representation of his observations, a representation that is largely free from interrogative manipulation and highly reliable. In addition, witnesses involuntarily give away more information in free narrative than they would in a fixed question-and-answer mode. Instead of listening and providing appropriate feedback, officers tended to interrupt and curb the flow of information; many relied heavily on question-and-answer patterns, overestimating their informative value.

In individual case studies, officers who handled the narrative phases best were characterized by patience, persistence, orderliness, calmness, and intellectual curiosity. Witnesses tended to describe them as tolerant and undomineering. Highly motivated and self-controlled police officers, on the other hand, usually preferred the interrogative mode.

The chief goal of the initial questioning is to establish a provisional reconstruction of the course of events; the police officer must place himself in the witness's position and recreate the crime in his mind as the witness experienced it. The conditions for this reconstruction process, which is not sufficiently mastered by many interrogating officers, are most favorable during narrative phases. In straight interrogative phases, with their fragmentary disclosure of information, police officers encounter considerable difficulty in gaining a lucid and coherent concept of the events—unless they possess a previous complete account of the events which may serve as a background for questions and conclusions.

An essential part of crime reconstruction is negotiating what motives were involved and ascribing these motives to the crime participants. Here the interrogating officer must proceed with particular caution, for ascribing a motive to an absent offender frequently leads into the realm of speculation. Conclusions drawn from such speculations should be carefully verified. Witnesses should be asked to construe an offender's motive only if the information is required for determining whether the events constitute a crime (as in cases of fraud).

The analysis of false information obtained during preliminary questioning demonstrates that the securing of valid information depends on a number of factors with which most interrogating officers were not sufficiently acquainted: (1) the officer's willingness to initiate and encourage witness narrative; (2) the witness's familiarity with interrogation procedures and information required; (3) the officer's ability to accept and encourage objectives and suggestions on the part of the witness; (4) the timing and nature of interrogative phases; and (5) the seriousness of the offense (i.e., the more attentive behavior of police officers when faced with specific offenses).

The recording phase. As soon as he has gained a general understanding of the offense and the victim's reliability, the officer initiates the recording phase. Step by step, the offense is reconstructed a second time while significant results are written down in the protocol. Again the sources for error are numerous, ranging from hearing errors to misunderstanding. A common source of mistakes introduced into the protocol is the wording of the testimony. Even though the protocol is written in the "I" form (from the witness's point of view), the phrasing is predominantly that of the interrogating officer. Many depositions were quite blatantly written in police style (e.g., fellow-policemen were referred to as "colleagues"), but none of the witnesses protested.

Another common source of error is that police officers take down information too quickly without waiting until the witness has definitely settled a particular point in his testimony. Once the erroneous information has been recorded, many officers seem surprisingly reluctant to make changes or corrections even if the witnesses ask for them. In our study, some officers even offered lengthy defenses of the recorded version rather than introduce a correction.

Police officers have various forms of writing down evidence at their disposal. For the purpose of this study, distinctions were made between eight techniques:

- The officer writes down information that was agreed upon with the witness beforehand.
- The officer writes down the result of the negotiations, reading it to the witness at the same time and asking for the witness's agreement.
- The officer writes and reads at the same time.
- The officer writes, then immediately afterwards reads what he has written, asking the witness's assent.
- The officer takes down individual sentences, rereading them later in a larger context (e.g., by paragraph).
- The officer writes and reads only fragments (out of context).
- The officer takes down the deposition without ever reading it to the witness.
- The officer takes down the deposition verbatim.

A correlation between the recording technique used and the number of errors introduced into the protocol showed that officers who did not bother to read the final version to the witness obtained the least adequate reconstruction.

As in the preliminary interviews, the amount of information obtained varied with the ability of policeman and witness to collaborate with each other. The behavior of the interrogating officers was slightly different from their behavior in the initial questioning. They now questioned their witnesses in greater depth and detail and in a more controversial manner. At the same time, they made greater efforts to take the personality of the witness into account.

On the whole, the crime reconstructions were far more complete and reliable than is generally assumed. With the exception of offender descriptions, they were by no means more faulty than numerous reconstructions based on a search of the crime scene. Yet, the depositions might be even more valuable if officers were trained from the outset to show more restraint as to their own contribution as well as greater openness toward witness suggestions and corrections.

The protocol. The functions of the protocol as a summary of the findings are three-fold: (1) to establish and document the events as a police case, (2) to serve as a basis for further investigation, and (3) to serve as a means of communication between the various investigators, and between police agencies and the prosecution. According to our results, only the first of those functions was fulfilled in an adequate manner.

A protocol cannot serve as a basis for investigation unless persons other than the interrogating officer (other investigators, attorneys) are able to understand and evaluate a witness's testimony. However, the protocols studied did not recreate the exact course of the interrogation; they evaluated neither the reliability of the witness nor the truthfulness of individual statements. At times, officers even took down doubtful statements and contradictions within a single testimony without marking them as such, even when these officers themselves did not believe the statements. In addition, as mentioned before, the protocols usually did not represent exact transcripts of the witness's account. They were merely the officer's adaptation of what he believed the witness had said.

To test the completeness and exactness of the protocols, they were compared to the synopses of the filmed offenses. It was discovered that the protocols contained far more relevant information than the preliminary questioning; an average of 75 percent of the necessary items had been mentioned. Also the amount of correct information increased significantly; an average of 60 percent of the necessary items were described correctly (80 percent in the best protocol) which led to the conclusion that crime reconstruction on the basis of witness testimony is a fairly reliable criminological tool.

The number of correct and pertinent facts contained in a protocol depended on a variety of factors, some of which have not been properly appreciated thus far: (1) the accurateness of the witness observations, (2) the recording technique used by the officer, (3) the officer's memory retention capacity, (4) his method of summarizing results, (5) characteristic interrogation procedures for different types of offenses, and (6) the amount of interrogation experience a witness has had.

Recommendations

The study was not limited to pointing out methodological problems and errors in the reconstruction of crimes, but included developing suggestions for improved techniques of interrogation and methods of reconstruction. Special effort was devoted to strategies designed to avoid errors in witness depositions. First, to facilitate the process of mental reconstruction, the officer must be trained to assume a variety of roles. He must experience the events as the witness "saw" them, but he must also be able to assume the suspect's point of view. In addition, he must be able to sympathize with the feelings the witness is experiencing in the course of the interrogation. Second, the officer should inform the witness clearly as to what information is relevant to the reconstruction of the crime. Third, since free witness narrative was found to yield the most valuable information, officers must learn techniques of active listening and of encouraging narrative phases. Fourth, police officers must improve their note-taking techniques during the preliminary questioning, especially during the narrative phases. Finally, officers should rely on diagrams of the scene of the crime to increase the accuracy of the information and to avoid misunderstandings. On the basis of observed errors and suggested improvements, it should be possible to design necessary changes in the traditional interrogation strategies which can be tested and adopted for regular use.

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